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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/781,381	02/18/2004	James K. Hudson	AHUD.002	2761
7590	06/28/2004		EXAMINER	
Rudolf O. Siegesmund 4627 N. Central Expressway Suite 2000 Dallas, TX 75205			MORRISON, NASCHICA SANDERS	
			ART UNIT	PAPER NUMBER
			3632	

DATE MAILED: 06/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/781,381	HUDSON, JAMES K.
	Examiner	Art Unit
	Naschica S Morrison	3632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 19 February 2004.
 2a) This action is **FINAL**. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-7 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-7 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date 2/18/04

4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____.
 5) Notice of Informal Patent Application (PTO-152)
 6) Other: _____.

DETAILED ACTION

This is the first Office Action for serial number 10/781,381, Tray and Cup Holder Combination, filed on February 19, 2004. Claims 1-7 are pending.

Specification

The disclosure is objected to because of the following informalities: on page 1, line 4 insert --now U.S. Patent 6,732,990-- after "2001". Appropriate correction is required.

Claim Objections

Claim 7 is objected to because of the following informalities: on line 13, "a" before "exterior wall" should be --an--. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 4 and 6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 4 recites the limitation "the crushable insert" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 5,421,459 to Mazzotti. With regards to claims 1, 2, and 4, Mazzotti discloses a tray assembly comprising: a downwardly extending, generally circular holder (4) including a first cavity defined by an exterior wall and bottom; a first tray (1) projecting laterally from the holder in a tray plane and defining a second cavity; and a crushable extension (4n) extending outwardly from and of unitary construction with the exterior wall and forming part of a tray support and adapted to engage an automotive cup holder.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,264,026 to Bradley in view of U.S. Patent 6,361,009 to Li.

Regarding claims 1-7, Bradley discloses a tray assembly comprising: a downwardly extending, substantially circular holder (35) including a first cavity defined by an exterior wall and bottom; a first tray (13) projecting laterally from the holder in a tray plane and defining a second cavity; a second tray (21) projecting laterally from the holder in the tray plane and defining a second cavity, wherein the first and second trays are asymmetrically disposed so as to form an obtuse interior angle in the tray plane; a circumferential support (45) extending downwardly from the holder, the first tray and the second tray and disposed at the perimeter of the tray plane formed by the holder and first and second trays; left and right inner supports (31) concentric with the top of the holder cavity and extending upwardly from the tray plane (as at 41, 43) and of unitary construction with the holder and first and second trays; wherein the top of the holder, the first tray, and the second tray are in the tray plane so that the exterior wall of the holder (35) extends downwardly from the tray plane. Bradley does not teach the tray assembly including a crushable extension attached to the holder. Li discloses a holder (65) comprising a crushable extension (69, 71) attached to and extending downwardly along an external wall (adjacent 44) of the holder. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the tray assembly of Bradley to include a crushable extension attached to the external wall of the holder and extending from the tray plane to the bottom of the holder because one would have been motivated to accommodate different lateral dimensions of the compartments into which the holder is inserted as taught by Li (col. 6, lines 1-5).

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mazzotti. With regards to claim 5, Mazzotti discloses the tray assembly as applied to claims 1, 2 and 4 above, and further teaches the tray assembly comprising: a second tray (tray 3 supporting fries 15 shown in Fig. 2) projecting laterally from the holder and defining a third cavity; wherein the first tray, second tray and holder are in a tray plane and the holder bottom is located beneath the tray plane at a sufficient distance to allow insertion of a cup (6) into the holder. Mazzotti does not teach the crushable extension (4n) extending from the tray plane to the bottom of the holder; however it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified crushable/deformable extensions (4n) to extend the entire length of the holder because one would have been motivated to provide flexibility along the entire length of the holder and further since it has been held that a change in the size of a prior art device is a design consideration within the skill of the art. In re Rose, 220 F.2d 459, 105 USPQ 237 (CCPA 1955).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. 6698703 to Li discloses a holder with a crushable extension.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Naschica S. Morrison, whose telephone number is (703) 305-0228. If attempts to reach the examiner are unsuccessful,

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the examiner's supervisor, Leslie Braun can be reached at 703-308-2156. The fax machine telephone number for the Technology Center is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this Application should be directed to the Technology Center receptionist at (703) 306-1113.


Naschica S. Morrison
Patent Examiner
Art Unit 3632
6/18/04


Korie Chan
Primary Examiner
Art Unit 3632